

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 310 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JINIBEN WD/O MOHANBHAI B RANA

Versus

SHANKERBHAI B RANA

Appearance:

MR MC SHAH for Petitioners

MR BJ JADEJA for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/02/98

ORAL JUDGEMENT

1. This is defendants' Second Appeal.

2. The brief facts are that House No. Ba/399/1 in Dandia Bazar, Brahmapuri, Baroda is owned by the plaintiffs on the basis of a registered Gift Deed executed by its admitted owner Shivabhai Dadabhai on 4.8.1949. The disputed property is portion of this

House. According to the plaintiffs the defendants being the widows of the plaintiffs' brother were permitted to occupy the disputed portion as licensees free of charge. Plaintiffs subsequently decided to revoke the licence and further decided not to permit the defendants to continue in occupation. Accordingly after revocation of licence Suit for possession of the suit premises was filed.

3. The Suit was resisted on variety of grounds viz. technical plea of pecuniary jurisdiction, multifariousness, bar of jurisdiction, non-joinder of necessary party, etc. On facts it was disputed that the plaintiffs are absolute owners of the entire house by virtue of the Gift Deed dated 4.8.1949. On the other hand the stand of the defendants was that the Gift Deed was executed in favour of all the brothers of the plaintiffs and all of them are joint owners. Another plea was that the defendants are not the licensees in the disputed accommodation. The next plea was that the defendants have acquired right in the disputed portion by adverse possession.

4. The trial Court repelled the defendants' plea and decreed the Suit for possession and mesne profit at the rate of Rs.15/- per month.

5. The Appeal was preferred which was dismissed. It is, therefore, this Second Appeal.

6. In this Second Appeal the following substantial questions of law were formulated :

- (i) Whether the lower Court erred in rejecting the contention that the Gift Deed Ex.33 is not duly proved ?
- (ii) Whether the Lower Court was right in construing the Gift Deed Ex.33 as Gift to plaintiffs only and negating the defendants' plea that the gift was to all the four brothers.

With the permission of the Court the learned Counsel for the appellant was permitted to raise additional substantial question of law that the defendants have become the owners of the disputed portion by adverse possession.

7. Having heard the learned Counsel for the parties and perusing the Judgments of the two Courts below it can be said that none of the three questions can be answered in favour of the appellant.

8. So far as the first question is concerned it hardly arises. A fact which is admitted need not be proved by the plaintiff. It is admitted to the defendants that the Gift Deed Ex.33 was executed by the previous owner in favour of the plaintiffs. What is contended by them is that the Gift Deed was for all the four brothers of the plaintiffs. Thus, the execution of the Gift Deed is not in dispute. Hence formal proof of execution of this Gift Deed was not required and marginal witness, if not examined, can be no ground for rejecting the Gift Deed which is a document admitted to the parties. It is, therefore, answer that the Courts below did not commit any error in holding that the Gift Deed was duly proved.

9. Coming to the second question it is clear from the Gift Deed that it was executed by the donor in favour of the plaintiffs only and not in favour of their four brothers. The document is to be construed as it is and if there is no ambiguity in the document oral evidence cannot be permitted to be taken or considered. Since there is no ambiguity in the Gift Deed that it was executed in favour of the two plaintiffs only the two Courts below were right in holding that it was not executed in favour of four brothers of the plaintiffs. This question is also answered accordingly against the appellants.

10. So far as third question raised with the permission of the Court at the time of final hearing of this Appeal is concerned, this has also no merit. On the basis of the Gift Deed only the plaintiffs are the owners of the entire house including the disputed portion. The Gift Deed excludes the possibility that the defendants are co-owners or co-sharers in the disputed house or disputed portion of the property. If they are not co-owners then it has to be seen whether on the strength of possession they can claim perfection of their title by adverse possession. The plea of adverse possession on the basis of evidence on record was rightly repelled by the two Courts below. For establishing the plea of adverse possession certain ingredients have to be pleaded and proved. It is essential for the defendants to plead and prove that they remained in occupation of the property for more than 12 years. It is further necessary for them to allege and prove that their possession was not secret; rather it was open continues and hostile to the real owner. Unless these ingredients are proved there can hardly be any acquisition of title by adverse possession. It is true that the defendant is permitted

to raise alternative as well as inconsistent pleas in the written statement, yet it has to be seen to what extent the inconsistent pleas or alternative plea of perfection of title by adverse possession could be proved by them. The evidence on record shows that the plea of adverse possession could not be established by the defendants. The reasons are manifold. After the Gift Deed was executed the plaintiffs got their names mutated in the records. No objection was raised by the defendants nor they alleged that mutation was a secret or collusive transaction. Thus, if the defendants did not come forward to assert their claim of mutation it can be said that they never asserted their title hostile to the title of the plaintiffs.

11. Payment of taxes is no evidence of ownership, title or perfection of title by adverse possession, but payment of tax is certainly a circumstance which shows that the person making payment was doing so in his own right as owner. It is not the case of the defendants that they permitted the plaintiffs to pay the tax jointly on their behalf also. Consequently if the defendants had chosen not to pay taxes it is a circumstance to negative their claim of assertion of title by adverse possession.

12. Electricity Bills were also paid by the plaintiffs and the defendants at no point of time contributed their share though they were permitted to occupy and consume electricity from the plaintiffs' meter.

13. The old house needed repairs. The repairs were carried out by the plaintiffs. The defendants never contributed a single shell towards the expenditure on repairs.

14. The property was managed by the plaintiffs as owners. They have been letting out portions of the house to various tenants, realising rent for them and filing Suits for their eviction. On this score also the defendants never came forward to join hands with the plaintiffs.

15. Mere entry in the municipal records about possession of the defendants in a portion of the house in question will not render them owners of the said portion. Records of municipal assessment are relevant only for the tax purposes and not for the purpose of title. They were never described as owners of the second floor of the house in the municipal record. Thus, mere occupation will not be a ground for returning abrupt finding that the

defendants have perfected title by adverse possession.

16. The Gift Deed though well in the knowledge of the defendants was never challenged in any Court of law before the institution of the Suit, out of which this Second Appeal arose. It again goes to repel the defendants' plea of adverse possession.

17. The defendants never asserted before any person or authority that they are occupying the disputed portion as title holders hostile to the title of the plaintiffs. These are sufficient material and circumstances to repel the defendants plea that they have perfected title in the suit accommodation by adverse possession.

18. The learned Counsel for the appellants then argued that the plaintiffs have failed to establish that the defendants are licensees and since no particular date of creation of licence is established and further because the defendants and their husbands were occupying the disputed portion much before the execution of the Gift Deed the theory of licence set up by the plaintiffs failed, hence the Suit for possession on the basis of revocation of licence was wrongly decreed by the Courts below. This contention also cannot be accepted. It has been held above that the defendants have failed to prove that they are co-owners or co-sharers in the disputed portion. They have also failed to establish acquisition of title by adverse possession. Mere possession may be permissive and permissive possession tantamounts to licence. It is not essential that a formal Deed should have been executed for granting licence. After all the defendants are the sister - in - laws of the plaintiffs. They were widows and on humanitarian ground they were permitted to occupy initially the first floor and the second floor in the disputed house free of charge. This was nothing, but creation of licence. Mere non-disclosure of the date on which the licence was granted is not fatal for the plaintiffs. There can be no dispute from the evidence on record that the defendants and their husbands were occupying a portion of the house prior to the execution of Gift Deed on 4.8.1949. However, the relevant point of time is 4.8.1949. From this date the possession of the defendants will be certainly that of a licensee and the licence can be revoked in writing through notice as well as orally. The licence was revoked in accordance with law. The Suit for possession was therefore rightly decreed by the trial Court and the Appeal was also rightly dismissed by the Appellate Court.

19. There is, thus, no merit in this Second Appeal which is hereby dismissed. The parties to bear their own costs.

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